

HOUSE BILL No. 1701

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-8.4.

Synopsis: Powerplant certification. Defines "facility" to mean a powerplant that: (1) generates electricity for the wholesale or retail market; and (2) has a generating capacity of at least 25 megawatts. Prohibits a person from constructing a facility without first obtaining a siting certificate from the Indiana utility regulatory commission (IURC). Requires the attorney general to appoint a deputy to serve as counsel for the environment in a proceeding involving an application for a siting certificate. Requires the appointed deputy to hire an independent consultant to conduct a study on the environmental impact of the proposed facility. Requires the applicant to submit a fee of \$50,000 to be applied toward the cost of the study. Requires the IURC to hold a hearing on all applications for siting certificates. Specifies the conditions that an applicant must meet before the IURC may grant a siting certificate. Requires the holder of a siting certificate to obtain an amended siting certificate if the holder makes certain alterations to the facility or the operation of the facility. Requires a certificate holder to construct, operate, and maintain the facility in accordance with the certificate. Allows the IURC to monitor a facility for compliance. Requires a certificate holder to submit an annual report to the IURC.

Effective: Upon passage.

Adams, Liggett, Young D, Munson

January 17, 2001, read first time and referred to Committee on Commerce, Economic Development and Technology.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1701

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 8.4. Utility Powerplant Certification and Siting**

5 **Sec. 1. As used in this chapter, "brownfield" has the meaning set**
6 **forth in IC 13-11-2-19.3.**

7 **Sec. 2. As used in this chapter, "certificate holder" refers to a**
8 **person that has been granted a siting certificate or an amended**
9 **siting certificate under this chapter.**

10 **Sec. 3. As used in this chapter, "concerned regulatory agency"**
11 **means a federal or state agency that issues licenses or permits**
12 **required for the construction, operation, or maintenance of a**
13 **facility under statutes, rules, or regulations in effect on the date**
14 **when an application for a siting certificate is accepted by the**
15 **commission.**

16 **Sec. 4. As used in this chapter, "counsel for the environment"**
17 **refers to a deputy attorney general appointed under section 13 of**

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1 this chapter to represent the public and the public's interest in
 2 protecting the environment in a hearing required under section 14
 3 of this chapter.

4 **Sec. 5. (a) As used in this chapter, "cumulative environmental**
 5 **impact" refers to the cumulative impact on public health and the**
 6 **environment of:**

7 (1) a facility that is the subject of an application for a siting
 8 certificate or an amended siting certificate under this chapter;
 9 and

10 (2) other facilities that are in existence, under construction, or
 11 reasonably foreseeable within the area of impact of the facility
 12 described in subdivision (1).

13 **(b) As used in this section, "environment" includes:**

14 (1) air;

15 (2) land;

16 (3) ground and surface water; and

17 (4) plant life and animal life, other than human life.

18 **Sec. 6. As used in this chapter, "facility" means an electric**
 19 **power generating plant that:**

20 (1) generates electricity for the wholesale or retail market;
 21 and

22 (2) has a generating capacity of at least twenty-five (25)
 23 megawatts.

24 The term includes a combination of electric power generating
 25 plants that are located at a single site. The term also includes
 26 transmission lines connecting a plant to a power transmission
 27 system or to an interconnected primary transmission system, or to
 28 both.

29 **Sec. 7. As used in this chapter, "person" means any individual,**
 30 **proprietorship, corporation, limited liability company, group,**
 31 **business trust, association, estate, trust, or partnership, any officer,**
 32 **board, commission, department, division, or bureau of the state or**
 33 **a political subdivision, or any other entity.**

34 **Sec. 8. As used in this chapter, "siting certificate" refers to a**
 35 **certificate required by section 9 of this chapter and issued by the**
 36 **commission under section 16 of this chapter.**

37 **Sec. 9. A person may not begin to construct a facility, by**
 38 **significantly altering a site to install permanent equipment or**
 39 **structures, without first obtaining from the commission a**
 40 **certificate that the proposed site for the facility meets the**
 41 **conditions specified in section 16 of this chapter. A person is not**
 42 **required to obtain a certificate under this section for activities**



related to:

- (1) preliminary engineering or environmental studies; or
- (2) the acquisition of a site for a facility.

The certificate required under this section is in addition to the certificate required under IC 8-1-8.5-2.

Sec. 10. A person who is required to obtain:

- (1) a siting certificate under section 9 of this chapter; or
- (2) an amended siting certificate under section 11 of this chapter;

for a facility must construct, operate, and maintain the facility according to the terms of the siting certificate or amended siting certificate.

Sec. 11. (a) If a person:

- (1) receives a siting certificate from the commission under section 16 of this chapter;
- (2) undertakes the construction, operation, or maintenance of a facility; and
- (3) seeks to make an alteration described in subsection (b);

the person must apply for and obtain an amended siting certificate from the commission in order to continue the construction, operation, or maintenance of the facility.

(b) A person is required to obtain an amended siting certificate under subsection (a) if the person makes a significant alteration to any of the following:

- (1) The location of the facility.
- (2) The ownership of the facility.
- (3) The management of the facility.
- (4) The financing of the facility.
- (5) The capacity of the facility.
- (6) The number, type, or size of the facility's plants.
- (7) The type of fuel used by the facility or the facility's fuel supply arrangement.
- (8) The facility's electric supply contracts.
- (9) The facility's impact on an energy transmission system.

Sec. 12. (a) An application for a siting certificate or for an amended siting certificate must be submitted to the commission on forms the commission prescribes. The applicant shall forward a copy of the application to all concerned regulatory agencies.

(b) An application for a siting certificate or for an amended siting certificate must contain the following information:

- (1) A description of the facility or proposed facility and its location.

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(2) Summaries of any studies conducted on the environmental impact of the facility or proposed facility.

(3) A list of all reasonable and available alternative locations for the site of the facility or proposed facility.

(4) The names and mailing addresses of all record owners of real property located within one-half (1/2) mile of the site of the facility or proposed facility.

(5) Any other information that:

(A) the applicant considers relevant to the application; or

(B) the commission by rule or order requires.

An application for an amended siting certificate must contain, in addition to the information required under subdivisions (1) through (5), a description of the alteration that the applicant seeks to make under section 11(b) of this chapter.

(c) The applicant shall submit, along with its application for a siting certificate or an amended siting certificate, a fee of fifty thousand dollars (\$50,000) to be applied toward the cost of the environmental study required under section 13(b) of this chapter.

(d) Any money that is submitted under subsection (c) and that remains after the costs described in that subsection have been paid shall be returned to the applicant.

(e) The commission shall retain and make available for public inspection a copy of an application made under this section.

(f) Not later than seven (7) days after submitting an application under this section, the applicant shall:

(1) send notice of the application, including a description of the facility or proposed facility, by United States mail to all record owners of real property located within one-half (1/2) mile of the proposed facility; and

(2) cause notice of the application, including a description of the facility or proposed facility, to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

Sec. 13. (a) When the commission receives an application for a siting certificate or an amended siting certificate under section 12 of this chapter, the commission shall forward a copy of the application to the office of the attorney general. Upon receiving the application, the attorney general shall appoint a deputy attorney general to represent the public and the public's interest in protecting the environment at the hearing required under section 14 of this chapter. The deputy attorney general appointed under this subsection shall perform the duties required under this section

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in a manner that will not conflict with:

- (1) the duties of the attorney general under IC 8-1-2-2; or
- (2) the Rules of Professional Responsibility for lawyers.

(b) The counsel for the environment appointed under subsection (a) shall commission an independent consultant to assess the consequences of the facility or proposed facility on the environment. The consultant's study must examine the following possible effects attending the construction, maintenance, or operation of the facility:

- (1) Air pollution.
- (2) Water pollution and consumption.
- (3) Noise pollution, including ambient volume and frequency levels.
- (4) The cumulative environmental impact.
- (5) Reduced property values associated with environmental risks for nearby properties.

The counsel for the environment shall introduce the consultant's study into evidence at the hearing required under section 14 of this chapter.

(c) At the hearing required under section 14 of this chapter, the counsel for the environment shall represent the public's concerns about the following issues related to the application:

- (1) Air pollution.
- (2) Water pollution and consumption.
- (3) Noise pollution, including ambient volume and frequency levels.
- (4) The cumulative environmental impact.
- (5) Reduced property values associated with environmental risks for nearby properties.

(d) The counsel for the environment has all the rights, privileges, and responsibilities of an attorney representing a party in a formal action. However, this subsection does not impair, derogate from, or otherwise affect the authority, powers, or responsibilities of the utility consumer counselor under IC 8-1-1.1.

Sec. 14. (a) When the commission receives an application for a siting certificate or an amended siting certificate under section 12 of this chapter, the commission shall schedule a public hearing on the application.

(b) The hearing required by this section must be held:

- (1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and
- (2) before the commission issues a certificate of public



convenience and necessity under IC 8-1-8.5.

(c) The commission shall send notice of the hearing to the following:

(1) Concerned regulatory agencies, as determined by the commission.

(2) Zoning authorities for the:

(A) county; and

(B) municipality, if any;

where the facility or proposed facility is or will be located.

(3) Record owners of real property located within one-half (1/2) mile of the facility or proposed facility.

Notice under this subsection must be sent by first class mail at least ten (10) days before the scheduled hearing.

(d) The commission shall cause notice of the hearing to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located. The publication required under this subsection must occur once a week for two (2) consecutive weeks, with the second publication occurring at least twenty (20) days before the date of the hearing.

(e) The commission shall conduct the hearing in the county that contains or will contain the greatest part of the plant or plants that comprise the facility or proposed facility.

Sec. 15. (a) The commission shall conduct a hearing required under section 14 of this chapter as a controversial proceeding subject to IC 8-1-1-5.

(b) The parties to the hearing include the following:

(1) The applicant for the siting certificate or amended siting certificate.

(2) A person entitled to notice under section 14(c) of this chapter, if, before the date of the hearing, the person files with the commission a notice of the person's intent to participate in the hearing.

(3) The office of utility consumer counselor.

(4) The counsel for the environment.

(5) Any other person, if, before the date of the hearing, the person petitions the commission for leave to intervene as party and the commission grants the petition.

(c) A concerned regulatory agency that appears on record at the hearing must state whether the facility or proposed facility meets the agency's permit or licensing requirements. If the facility or proposed facility does not meet the agency's requirements, the agency must recommend changes that would bring the facility or

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1 proposed facility in compliance with the agency's permit or
 2 licensing requirements. The commission may not issue a siting
 3 certificate or an amended siting certificate for a facility or
 4 proposed facility that does not meet the permit or licensing
 5 requirements of a concerned regulatory agency.

6 (d) Zoning authorities for the:

7 (1) county; or

8 (2) municipality, if any;

9 where the facility or proposed facility is or will be located may
 10 appear on record at the hearing and present written or oral
 11 testimony as to whether the facility or proposed facility meets local
 12 zoning requirements.

13 (e) At the hearing, the applicant has the burden of proof to
 14 establish that it meets the conditions required under section 16 of
 15 this chapter for the issuance of a siting certificate.

16 (f) The commission shall accept written or oral testimony from
 17 any person who appears at the public hearing, but the right to call
 18 and examine witnesses is reserved for the parties to the hearing.

19 (g) The commission shall make a record of the hearing and all
 20 testimony received. The commission shall make the record
 21 available for public inspection.

22 Sec. 16. (a) After conducting the hearing required under section
 23 14 of this chapter, the commission shall render a decision on an
 24 application in an expeditious manner after giving full consideration
 25 to the evidence presented at the hearing. The commission shall
 26 issue a siting certificate or an amended siting certificate if the
 27 following conditions are met:

28 (1) The facility or proposed facility meets the commission's
 29 requirements for a certificate of public convenience and
 30 necessity under IC 8-1-8.5.

31 (2) The applicant receives the licenses or permits required by
 32 all concerned regulatory agencies.

33 (3) The application complies with local zoning and planning
 34 standards. The applicant's receipt of any approvals, permits,
 35 or variances required under local zoning and planning
 36 ordinances is necessary and sufficient to satisfy this
 37 requirement.

38 (4) The applicant proves that the applicant has identified all
 39 reasonable and available alternative locations for the facility
 40 and the commission determines that the proposed site is
 41 preferable to those alternative locations, after giving due
 42 consideration to appropriate technical, environmental, and

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economic factors. However, the commission shall give preference to the following alternative locations when they are both reasonable and available as potential sites for a facility:

(A) Brownfield sites that are isolated from populated areas.

(B) Sites of existing or former facilities that can be replaced or repowered.

(C) Other sites identified for powerplant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

(5) The commission determines that the construction and operation of the facility or proposed facility is in the interest of the citizens of Indiana. In making this determination, the commission shall consider the following:

(A) The location of the facility.

(B) The ownership of the facility.

(C) The management of the facility.

(D) The financing of the facility.

(E) The capacity of the facility.

(F) The number, type, and size of the facility's plants.

(G) The type of fuel used by the facility, the facility's fuel supply arrangements, and the cumulative effects of the fuel supply arrangements of all existing and proposed facilities using the same fuel on:

(i) the reliability of Indiana's electrical system; and

(ii) the price and availability of the fuel for other uses in Indiana.

(H) The facility's electric supply contracts.

(I) The facility's impact on the electric and gas transmission systems serving Indiana.

(J) Other factors that the commission considers relevant in making the determination required under this subdivision.

(6) The commission determines that the construction, maintenance, and operation of the facility or proposed facility will have no significant adverse effects on the use of nearby land, the surrounding environment, and the aesthetic quality of the area surrounding the site. In making this determination, the commission shall give full consideration to the following:

(A) The report of the independent consultant commissioned by the counsel for the environment under

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section 13(b) of this chapter.

(B) The following possible effects attending the construction, maintenance, or operation of the facility:

(i) Air pollution.

(ii) Water pollution and consumption.

(iii) Noise pollution, including ambient volume and frequency levels.

(iv) The cumulative environmental impact.

(v) Reduced property values associated with environmental risks for nearby properties.

(C) Whether the applicant has met the requirements of subdivisions (2) and (3). However, the applicant's satisfaction of the requirements of subdivisions (2) and (3) is a necessary but not sufficient basis for the commission to determine under this subdivision that the facility will produce no significant adverse effects.

(7) The commission determines that the applicant is willing to construct, operate, and maintain the facility under the provisions of:

(A) this chapter; and

(B) the siting certificate or amended siting certificate.

(8) The applicant establishes proof of financial responsibility, as required under section 17 of this chapter, for the eventual costs of closing the facility. The financial responsibility established by the applicant must cover the costs of the following:

(A) Closing the facility in an environmentally sound manner, including, at a minimum, the following actions:

(i) Eliminating all holding ponds.

(ii) Removing all contaminated soil.

(iii) Draining, dismantling, and removing all fuel tanks.

(iv) Dismantling and removing all combustion turbines and related equipment.

(v) Removing the foundation.

(vi) Installing groundwater monitoring equipment if soil at the facility is contaminated.

(B) Monitoring, maintaining, and remediating the facility after its closure.

(b) A decision of the commission under this section is subject to judicial review under IC 8-1-3.

Sec. 17. (a) Before the commission may approve an application for a siting certificate or an amended siting certificate under

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section 16 of this chapter, the applicant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the applicant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that an applicant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the facility in a manner that:

- (1) minimizes the need for further maintenance and remediation; and
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the facility ceases operations.

(c) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a facility for which a person has been granted a siting certificate or an amended siting certificate under section 16 of this chapter, if the certificate holder does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

- (1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of a facility.
- (2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a certificate holder may be released to the certificate holder when the certificate holder meets the closure and post-closure standards established under subdivision (1).

Sec. 18. (a) Issuance of a siting certificate by the commission



under section 16 of this chapter authorizes the construction of the facility on the site designated in the siting certificate and according to the terms and conditions specified in the siting certificate and in any licenses and permits issued by concerned regulatory agencies.

(b) After granting a siting certificate or an amended siting certificate, the commission may monitor the facility for compliance with the terms and conditions of the siting certificate. Representatives of the commission may enter the facility at any time to make an inspection.

(c) The holder of a siting certificate or an amended siting certificate shall file with the commission an annual report on forms furnished by the commission. The forms furnished by the commission must require the certificate holder to provide the information required under IC 8-1-2-49.

(d) A siting certificate terminates if the commission determines that the holder of the certificate has failed:

(1) to begin construction of the facility within two (2) years after issuance of the siting certificate; or

(2) to complete construction of the facility within five (5) years after issuance of the siting certificate.

(e) Subject to the approval of the commission, a siting certificate or an amended siting certificate may be transferred to any person with the financial, managerial, and technical ability to operate the facility according to the terms of the siting certificate or amended siting certificate. A siting certificate or an amended siting certificate may be transferred by operation of law to any receiver, trustee, or similar assignee under a mortgage, deed of trust, or similar instrument.

Sec. 19. (a) A person who:

(1) begins to construct a facility, by significantly altering a site to install permanent equipment or structures, without first obtaining from the commission a siting certificate;

(2) constructs, operates, or maintains a facility other than in compliance with a siting certificate or an amended siting certificate; or

(3) causes an act described in subdivision (1) or (2);

is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation and for each day the violation continues.

(b) The commission's authority to impose a civil penalty under this section is subject to the right of a person described in subsection (a) to receive notice of the penalty and an opportunity



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to be heard regarding the penalty.

(c) The commission may file an action in the circuit or superior court with jurisdiction in the county where a facility is located to obtain:

(1) a restraining order; or

(2) temporary or permanent injunctive relief;

as necessary to obtain compliance with this chapter by the facility.

Sec. 20. Notwithstanding IC 8-1-2.5-5, the commission may not decline to exercise its jurisdiction under this chapter or under IC 8-1-8.5-1 through IC 8-1-8.5-6 with respect to a facility. However, the commission may adopt rules under IC 4-22-2 to establish procedures:

(1) for the exercise of its jurisdiction under this chapter; or

(2) for the exercise of its jurisdiction under IC 8-1-8.5-1 through IC 8-1-8.5-6;

that differ depending on the type, size, or fuel source of the facility under review. The commission may adopt rules under IC 4-22-2 or issue an order under IC 8-1-2.5-6 to further implement this chapter.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission established by IC 8-1-1-2.

(b) As used in this SECTION, "facility" has the meaning set forth in IC 8-1-8.4-6, as added by this act.

(c) As used in this SECTION, "person" has the meaning set forth in IC 8-1-8.4-7, as added by this act.

(d) As used in this SECTION, "siting certificate" has the meaning set forth in IC 8-1-8.4-8, as added by this act.

(e) Notwithstanding IC 8-1-8.4-9, as added by this act, a person is not required to obtain a siting certificate from the commission before beginning to construct a facility if the person has:

(1) acquired a site for the facility;

(2) publicly announced the person's intention to construct the facility;

(3) entered contracts for major components of the facility; and

(4) received a certificate of public convenience and necessity under IC 8-1-8.5-2 or obtained an order in which the commission agrees to decline its jurisdiction over the person under IC 8-1-2.5-6;

before the effective date of this act.

SECTION 3. An emergency is declared for this act.

